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ABSTRACT

The early efforts of the Federal Trade Commission (FTC) to regulate advertising take on new historical interest in the wake of the United States Supreme Court's landmark decision to grant limited First Amendment protection to commercial speech. An examination of the FTC's advertising regulation from its beginning in 1914 to 1938, when its authority over advertising was legislatively validated, shows that commercial speech raised no constitutional concerns except for occasional consideration as a property right subject to constitutional guarantees of due process. Decisions by the Supreme Court in "Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council" (1976) and related cases have made it clear that advertising must be regarded in some instances as a form of speech subject to the protections traditionally provided other forms of expression guarded by the First Amendment. Within the boundaries and standards set by the emerging doctrine of constitutionally protected commercial speech, it seems that the basic pattern of regulatory authority and activity that developed from 1914 to 1938 should survive largely intact. (RL)

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# F.T.C. REGULATION OF ADVERTISING AND ITS BASIS IN THE LAW

## 1914 - 1938

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# F.T.C. REGULATION OF ADVERTISING AND ITS BASIS IN THE LAW
## 1914 - 1938

The Federal Trade Commission's early efforts to regulate advertising take on new historical interest in the wake of the U.S. Supreme Court's 1976 landmark decision to grant limited First Amendment protection to commercial speech.[1] This paper examines the commission's development of advertising regulation from 1914, the year of the commission's founding, to 1938, when its authority over advertising was legislatively validated in the Wheeler-Lea Amendment to the Federal Trade Commission Act. During this period, indeed throughout most of the F.T.C.'s history, commercial speech raised no constitutional concerns except for occasional consideration as a property right subject to constitutional guarantees of due process. As a result, F.T.C. regulatory procedures and sanctions were developed to regulate advertising as an arm of commerce, rather than as a form of speech. The 1976 decision of the United States Supreme Court in Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, and related cases have made it

clear that advertising now must be regarded as a form of speech, which is subject in some instances to the protections traditionally provided other forms of expression guarded by the First Amendment. The courts, however, also have emphasized that First Amendment protection need not interfere with regulation of false, deceptive and misleading advertisements. With this subtle but significant change, it becomes historically fruitful to reexamine the processes by which the F.T.C. administrative attitude and procedures regarding advertising developed.

The Federal Trade Commission Act of 1914 was among the last pieces of reform legislation of the Progressive Era. Along with the Clayton Anti-Trust Act, it was intended to implement the progressive ideal of restoring true competition to the business world.[2] The Clayton Act was designed to strengthen and supplement the Sherman Anti-Trust Act's prohibitions on monopolies through precise definitions of practices, such as certain types of mergers and pricing agreements, which unfairly restrained trade. The Federal Trade Commission Act contained broader, more general bans on anti-competitive practices and created a bi-partisan, five member Federal Trade Commission to investigate those threats to competition however they arose. The Commission's mandate and methods were spelled out in section 5 of the Act, which directed the Commission to investigate unfair methods of competition and, when it served the public interest, to issue cease and desist orders to the offenders. Such orders were made subject to enforcement and review by the federal district courts. No mention was made of advertising, but it soon was to be

included within the Commission's jurisdiction under the umbrella of "unfair methods of competition."

The creation of the Commission in 1914 was hailed by small businessmen and progressive politicians as the beginning of a new era of constructive regulation of the nation's economic life.[3] Small business had sought and welcomed such regulation, and big business found the Woodrow Wilson administration willing to accommodate anti-trust legislation to its demands.[4] Federal regulation promised relief from inconsistent and burdensome state trade regulations; a buffer against public mistrust and hostility, and hope for stability and predictability in economic affairs.[5] The business community, especially the U. S. Chamber of Commerce, envisioned the new Federal Trade Commission as a friendly advisor which would offer opinions and help business toward its proclaimed ideal of self-regulation.[6] Indeed, that was the direction adopted by the pro-business, and largely incompetent, Wilson appointees of the Commission's early years.[7] The Commission's friendly stance toward the established business community was reflected in such events as the announcement by chairman, Joseph E. Davies, in March, 1915 that the Commission would provide some definitions of what business could not do, so that it might protect 99 per cent of business against the unfair competition of one per cent.[8] Davies' successor, Edward N. Hurley, went even further -- printing booklets on money saving accounting techniques and bombarding business with speeches and pamphlets stressing government's helpfulness to business.[9]

In this sympathetic regulatory environment the advertising

industry met with the Federal Trade Commission in November 1915 to discuss false and misleading advertising as an unfair method of competition. A spokesman for the Better Business Bureau later recalled that the session included representatives of farm journals, newspapers, advertising agencies, the Better Business Bureau's National Vigilance Committee, and the president of the Associated Advertising Clubs of the World. He reported:

> After the discussion, the Commission expressed its willingness to give prompt rulings in any fake advertising case brought before it, and it was not long in doing so by 'cause and desist' orders brought against specific abuses . . . Many . . . cases originated with facts forwarded to the Commission by the National Vigilance Committee.[10]

While such enthusiasm for truthful advertising seems exemplary, it must be remembered that the Commission's early investigations and orders were based strictly upon the impact of advertising on competitors -- not its impact on consumers. Involvement by the Federal Trade Commission offered aggrieved businessmen their first real recourse against unfair advertising by competitors. Previously, under common law, aggrieved competitors could file private civil suits for injury to trade, but only for a limited number of reasons: trademark infringement, "passing off" of goods as those of a competing producer, or disparagement of another's product.[11] Furthermore, the established advertising industry had been working for more than a decade to develop some standards for advertising. After the turn of the century, when members of the advertising fraternity formed local and national organizations, much concern was voiced regarding the poor public image created by such marginal advertising as exaggerated patent medicine

claims and fraudulent retail "sales." Through Better Business bureau vigilance committees and the proposed Printers' Ink Model Statute for state controls on fraudulent advertising,[12] the industry maintained its commitment to self-regulation. These measures, it hoped, both would forestall unwelcome external regulations and protect against sales tactics which injured other members of the industry.[13] It appeared in 1915 that established advertisers might find a useful ally in the F.T.C.

Of only five complaints issued in 1916, the Commission's first full year of activity, three concerned false labeling or advertising as an unfair method of competition. All three involved misrepresenting cotton thread as silk.[14] When the U. S. entered World War I, the Commission's efforts were concentrated on cost-finding for the War Industries Board.[15] In the fiscal year ending June 30, 1918, allegations of advertising misrepresentations amounted to 6 percent of the proceedings before the Commission: this percentage increased to 14 percent the following year, and rose steadily to 38 percent in 1921, and 70 percent in 1925.[16]

Significantly, the first federal court test of the F.T.C. Act as a whole, Sears Roebuck and Company v. F.T.C.[17] in 1919, involved false and misleading advertising as an unfair trade practice. In this case, the impact on competitors was clearly damaging -- Sears was claiming that its size and efficiency enabled it to sell sugar and tea more cheaply than its competitors. In fact, Sears was using those products as loss leaders, or come-ons for profitable combination sales. Most important to the advertising industry, the company

was "knocking" or disparaging the prices and practices of its competitors. Thus, advertisers probably welcomed the upholding by the Seventh Circuit of Appeals of the commission's authority to "stop all those trade practices that . . . injure competition directly or through deception of purchasers."[18] The operative word, however, was competition rather than purchasers.

The first decision to take note of the public's welfare as it related to advertising was the 1922 case of F.T.C. v. Winsted Hosiery Co.[19] There the U.S. Supreme Court upheld a Commission order that the company "cease and desist" from using labels such as "wool", "merino", or "worsted" on goods which were principally or entirely made of cotton. Unimpressed by the argument that such labeling had become commonplace throughout the industry, the Court concluded that as "a substantial part of the public still was misled by the use of the labels . . . the public had an interest in stopping the practice."[20] The Court also made it abundantly clear that the public interest still was only part of the Section 5 formula, pointing out that false advertising is inherently unfair to competitors:

> The practice constitutes an unfair method of competition as against manufacturers of all wool underwear, and as against those manufacturers . . . who brand their product truthfully. For, when misbranded goods attract customers by means of the fraud they perpetrate, trade is diverted from the producer of truthfully marked goods.[21]

This broadening view of the scope of "unfair competition" enabled the Commission to exercise considerably more regulatory power over false advertising until 1931, when a hostile Supreme Court would take a literal and limiting view of the Commission's role.

In its first decade, the F.T.C. met little or no resistance

from organized advertising, undoubtedly because its major regulatory thrust continued to be protection of business interests from unfair tactics of competitors in advertising as in other areas.[22] Articles in Printers' Ink, the leading advertising trade journal, carried such pro-regulatory titles as "How the Federal Trade Commission Fosters Healthy Competition"[23] and "How the Federal Trade Commission Curbs False Advertising."[24] Because "knocking" or disparaging copy was such anathema to the industry, it was left to outside commentators to note that the F.T.C. walked a perilously thin line in distinguishing between disparagement and fair comment in advertising. In his 1924 treatise on the Federal Trade Commission, Gerard Henderson wrote:

> Truthfulness in advertising is of the greatest importance . . . On the other hand, we must not underestimate the value of the right to express publicly, in advertising or otherwise, honest opinions concerning one's own wares and those of competitors, whether or not those opinions are believed to be correct by a jury or a board of public officials.[25]

He expressed even stronger reservations about the propriety of a 1919 cease and desist order issued against a mail order lumber company's advertisement which triumphantly announced an F.T.C. action against "regular (non-mail order) dealers." Henderson found the F.T.C.'s order that the mail order company halt its advertisements or include the original order's full and exact wording of "an arbitrary attempt to suppress free comment upon the Commission's own decisions (which) is difficult to reconcile with the First Amendment of the Federal Constitution."[26]

As the decades unfolded, the advertising industry did begin

to show concern, but not on the constitutional level suggested by Henderson. Rather, advertisers and publishers sought — and received — repeated reassurance that the F.T.C. did not intend to prohibit "puffing" (exaggeration) and/or statements of opinion in advertising copy and that doubt as to the validity of a claim should be resolved in favor of the advertisers whenever possible.[27] The concern deepened in 1928 when the F.T.C. proposed a trade practice conference to outline publishers' "responsibilities and duties with regard to false advertising."[28] Trade practice conferences had been used by the F.T.C. since 1919 to encourage industries to set voluntary internal guidelines and enforcement procedures to prevent anti-competitive practices, but publishers worried that this conference might also be used to promote Chairman William Humphrey's proposal to make publishers parties to F.T.C. complaints against fraudulent advertisers.[29] In the weeks following the proposal, the editors and readers of Printers' Ink expressed grave reservations about the wisdom and equity of Humphrey's plan,[30] pointing out that publishers of small newspapers and periodicals would be especially hard-pressed to scrutinize the content and character of every advertising claim offered for publication. Despite these concerns, the industry generally supported and attended the October 9, 1928 trade practices conference, and agreed upon a resolution directing the Better Business Bureau to police fraudulent advertising in periodicals.[31]

These voluntary measures apparently did little to dissuade Chairman Humphrey from including publishers as responding parties

in F.T.C. complaints against fraudulent advertisers. In 1929 the Commission announced that it would name the publisher and the advertising agency involved with a fraudulent ad as co-respondents with the offending advertiser.[32] To expedite the handling of advertising cases, the Commission also created a special board of investigation consisting of three Commission attorneys empowered to investigate advertising, hold informal hearings and make reports and recommendations to the Commission. The board handled most complaints through informal hearings at which the offending publisher, agency, and advertiser could stipulate willingness to abide by the Commission's recommendation and thereby avoid the embarrassment of being publicly named in a complaint. In the numerous cases settled by stipulation before the board, the parties generally agreed either to discontinue the advertising altogether or to modify it to meet the board's specifications.[33]

From the Commission's standpoint, the board was a great success; by 1932, the Commission estimated that more than 20,000 false and misleading advertisements had been discontinued or revised in the past year alone "directly due to the Commission's activities."[34] While this estimate may have been inflated by the Commission's need to justify its budget to a Depression Congress, the continuing message of the F.T.C. annual reports was that the board of investigation had streamlined and expedited the handling of advertising complaints. And, although the advertising and publishing industries continued to argue for self-regulation, there was no concerted opposition to this particular method of government control.

The advertising industry did rise up in opposition to a 1929 Senate bill which would have tightened controls on advertising by the tobacco industry through expanding the restrictions of the Food and Drugs Act,[35] and the enforcement authority of the Food and Drug Administration. Opponents suggested that the measure's sponsor, the anti-tobacco Senator Reed Smoot of Utah probably was less interested in protecting American consumers from deceit than in protecting his constituent sugar beet farmers and refiners who were smarting under the American Tobacco Company's successful appeal to "Reach for a Lucky instead of a sweet." Most pernicious of all, advertising spokesmen warned, "the intent of his bill is to set up what amounts to a Government censorship of advertising, since any regulation applying to the food and drug industries would not take long to spread to others."[36] The Smoot bill failed, but there would be other Congressional attempts to authorize greater government control over advertising. These too would meet vocal opposition from the industry.

With the arrival and rapid deepening of the Great Depression, the advertising industry began to feel the effects of public criticism and loss of confidence. Advertising had grown tremendously during the prosperous '20s and its message had been predicated on vigorous promotion of business, consumption and the good life. Now that all three were in serious trouble, advertising was suspect as well.[37] A consumer movement developed rapidly in this atmosphere, building on a foundation which had been laid after World War I by clubwomen opposed to high prices and bolstered in 1927 by Stuart

Chase and Frederick J. Schlink with their book Your Money's Worth: A Study in the Waste of the Consumer's Dollar. Schlink and Chase wrote critically of America's entire marketing structure, but they were especially harsh in their evaluation of advertising. Such arguments could only grow in appeal as Depression-era consumers became increasingly frustrated by the gap between the declining quality of the goods they could buy and the exalted claims of the advertising they heard and saw.[38] Much of the advertising industry was perplexed by this public skepticism,[39] and it sought refuge in the belief that advertising was the target of a subversive strategy designed to discredit it.[40] Others in the industry, including the trade journals, proposed the moderate approach of meeting the consumer movement halfway and acknowledging certain obligations toward the public.[41] Against this social backdrop, the Supreme Court and the Congress would consider future relationships between advertising and the F.T.C.

The first major step in this review process did not bode well for the F.T.C. In May, 1931, it was dealt a substantial setback by Supreme Court's reversal in F.T.C. v. Raladam Co.[42] of a lower court decision that had upheld a cease and desist order against advertisement of an "obesity cure". Contrary to the precedent set by Winsted Hosiery, the court narrowly construed the Commission's powers and ruled that Commission actions must be based on the presence of all three elements of Section 5: (1) that the methods complained of are unfair; (2) that there is an element of competition susceptible to damage, and (3) that it is in the interest of the public to prevent the continued use of such methods.[43] The court acknowledged the

presence of the first and third elements in Raladam, but added that without an aggrieved competitor the Commission's remedial actions were unauthorized and beyond the scope of its powers under the language of the act; "If broader powers be desirable they must be conferred by Congress."[44]

Even though new legislation was not immediately forthcoming, the F.T.C. regained much of the ground lost in Raladam from the Supreme Court itself in the 1934 decision in F.T.C. v. R. F. Keppel and Brother, Inc.[45] In Keppel the Court upheld enforcement action against an Illinois penny candy manufacturer's "break and take" sales method which enticed buyers, usually children, through such lottery-like promotional methods as enclosing a penny inside random wrapped candy assortments - thus refunding the purchase price. Another version of "break and take" sales consisted of enclosing retail purchase prices ranging from one to three cents inside identical candy assortments - thus enticing a child to gamble on getting his candy for one penny, rather than two or three. Reopening the way for F.T.C. regulation of unfair methods not directly impacting competitors, the Court said:

> We can perceive no reason for distinguishing between the element of chance as employed here and the element of deception involved in labelling cotton goods 'Natural Wool' as in the Winsted Hosiery Co. case. It is true that the [F.T.C.] statute does not authorize regulation which has no purpose other than that of relieving troublesome competition or of censoring the morals of businessmen. But here the competitive method is shown to explicit consumers, children, who are unable to protect themselves . . . It would seem a gross perversion of the normal meaning of the word, which is the first criterion of statuatory construction, to hold that the method is not "unfair."[46]

Following Keppel, the F.T.C. once again ventured against false advertisers with some confidence, protecting against Raladam - type reversals by building its cases in ways which would show competition and harm to competitors.[47] Developing such cases was costly and time consuming,[48] so the F.T.C. soon followed the suggestion of the Raladam opinion and sought express authority through a Congressional amendment to its enabling legislation.

Congressional consideration regarding advertising began within a year of the Raladam decision. In the spring of 1932 the Walsh Bill to supplement the powers of the Federal Trade Commission proposed regulation of "all acts of every kind and nature which might tend to mislead or deceive competitors, the public, or the ultimate consumer, such as misstatements, express or implied, oral or written . . . "[49] Printers' Ink warned that the bill introduced the possibility of "rigid advertising censorship" and advised its readers that: "Although there is perhaps little chance of the bill's passage during the present Congress it indicates a serious trend that should be diverted."[50] As Printers' Ink predicted, the Walsh bill disappeared into oblivion only to be followed by other proposals for increased federal regulation of advertising. The bill which attracted the most controversy was Senator Royal S. Copeland's proposal to amend the Pure Food and Drug Act of 1906 to prohibit false advertising of any food or drug. Commonly known as the "Tugwell Bill," it sought to broaden the definition of false and misleading advertising to encompass misrepresentations of opinion as well as fact, and ambiguities and inferences as well as outright fraud.[51] The lines of

support and opposition to the Tugwell Bill were predictably clear. Spokesmen and lobbyists for consumer groups enthusiastically supported the effort to increase the regulatory reach of the Food and Drug Administration. The food and drug industries were bitterly opposed to the bill and its later revisions. The advertising industry and most of the press joined in condemnation of the original bill and supported its later modification only when it became apparent that some form of legislation was inevitable. The advertisers' primary concern had been to narrow the definition of false advertising from that which "creates a misleading impression" to that which "is misleading in a material respect." It was unfair, they argued, to expect a copywriter to foresee precisely what effect an appeal would have on an unseen audience. Similar modifications were proposed by other interest groups, and a greatly weakened Tugwell bill died in committee in June 1934. Subsequent bills were proposed to replace it in 1935 and 1937, each milder than the one before.[52] The debate ultimately produced two pieces of legislation, both passed in 1938; a new Food, Drug, and Cosmetic Act which updated the 1906 statute and granted the F.D.A. substantial new powers over branding and labeling, but not over advertising; and the Wheeler-Lea Amendment to the Federal Trade Commission Act which extended the F.T.C.'s power to the advertising of food, drugs, and cosmetics and granted the long-sought authority over acts which were unfair or deceptive to the public, regardless of presence of a competitor.[53]

Thus, with the urging of consumer groups and the F.T.C., Congress put an end to any lingering questions of the Commission's au-

thority to regulate false, misleading, and deceptive advertising. In so doing, it showed how far the nation's consciousness had shifted away from the progressive ideal that pure and fair competition alone in the business world would provide maximum benefit to the body politic. Now, the ultimate consumer was also explicitly recognized as requiring and entitled to protection against unfair methods of trade. Not surprisingly, this new dimension was not welcomed whole-heartedly by the advertising industry which once had eagerly embraced the idea of F.T.C. enforcement of fair competition. Then, as now, there was little disagreement between the F.T.C. and the industry regarding the need to eliminate false, deceptive, and misleading speech. Rather the difficulty always would be in the process of definition; advertisers feared that F.T.C. regulation would mushroom into bureaucratic censorship which would seek to strip away advertising's colorful language and emotional appeals. To interfere with those appeals, advertisers argued, not only exceeded the proper bounds of regulation but unfairly deprived businesses of property without due process of law.[54] As advertisers began to feel threatened by the weight of regulation and to search for viable arguments against its scope, they were limited by the traditional view of advertising as an element of commerce rather than of speech. Advertisers of the '20s and the '30s failed to raise the issue of First Amendment protection against excessive meddling by government regulators.

Now, even with the extension of the First Amendment to commercial speech, the courts demand that the stream of commercial in-

formation, in the words of the Virginia Board opinion, flow "cleanly as well as freely." Virginia Board has and will continue to force the F.T.C. to defend some of its approaches and remedial actions toward advertising against constitutional attack. The slight, but perceptible change in attitude is perhaps best illustrated by recent refusals of several courts to unhesitatingly accept the F.T.C.'s recommendations for strong remedial actions, most notably corrective advertising against offending advertisers. In Beneficial Corp. v. F.T.C.[55], the Third Circuit Court of Appeals explained that prior to Virginia Board it would have deferred to the Commission's expertise and accepted a recommendation for remedial action as valid, but that now:

> The First Amendment requires, we believe, an examination of the Commission's action that is more searching than in other contexts . . .
>
> ...That does not mean that an advertiser may engage in speech that is an essential part of a scheme to violate an otherwise valid law. It does mean that the remedy for the perceived violation can go no further in imposing a prior restraint on protected commercial speech than is reasonably necessary.[56]

A Congress increasingly hostile to the F.T.C. also has taken note of Virginia Board. A recent Senate committee report on a bill to curb F.T.C. investigations into "unfair" advertising such as children's television commercials included the objection that "By assuming the authority to decide that particular commercial speech (although truthful and nondeceptive) is somehow 'unfair' and should be banned on this basis, the [Federal Trade] Commission has taken a step into an area permeated by First Amendment concerns."[57]

Nor have the implications of Constitutional protection es-

caped the attention of the F.T.C. itself. Robert Reich, director of the Commission's office of Policy Planning and Evaluation reported that it came "as something of a rude shock for the Commission suddenly to learn from the Supreme Court that the First Amendment protects commercial speech. Although the court in Virginia Board was especially solicitous of government regulation aimed at preventing deception, the elevation of commercial speech to First Amendment status nonetheless suggests both a boundary to that regulation and a standard against which it must be measured."[58]

Within the boundaries and standards set by the emerging doctrine of Constitutionally protected commercial speech, it seems that the basic pattern of regulatory authority and activity that developed from 1914 to 1938 should survive largely intact. During those formative years the basic concerns of fair competition within the industry and fair dealings with the consumer were debated and, to a large degree, resolved by the commission, the industry, the consumers, the courts, and the Congress. Now as these bodies begin to regard commercial speech as an expression of free speech, as well as an organ of commerce, there is nothing to suggest that these tenets will suffer dramatic change.

## Notes

[1]Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council (425 U.S. 748). The Supreme Court struck down a state law prohibiting price advertising of prescription drugs and signaled the end of a Constitutional era in which commercial speech could be summarily denied First Amendment protection of freedom of speech and of the press. The court for the first time expressly held that "speech which does no more than propose a commercial transaction" is entitled to Constitutional protection unless it is: (1) false, deceptive, or misleading; (2) subject to reasonable control as to time, place, or manner of presentation; (3) soliciting an illegal activity, or (4) subject to the special regulations of the electronic media.

This study, like the Court, will exclude the electronic media from its examination.

[2]Richard Hofstadter, The Progressive Movement: 1900-1915, (Englewood Cliffs, N.J.: Prentice-Hall, Inc., a Spectrum Book, 1963), p. 13.

[3]Arthur S. Link, Wilson: The New Freedom, (Princeton, N.J.: Princeton University Press, 1956), p. 442.

[4]Ibid, p. 446.

[5]Gabriel Kolko, The Triumph of Conservatism: A Reinterpretation of American History, 1900-1917, (New York: The Free Press of Glencoe, div. of the Macmillan Co., 1963), pp. 178-179.

[6]Ibid., p. 271; and Arthur S. Link, Woodrow Wilson and the Progressive Era, 1910 - 1917, (New York: Harper & Bros., The New American Nation Series, 1954), p. 70

[7]Louis D. Brandeis, a major architect of the Act, later observed that Wilson ruined the Commission through his choice of commissioners. The first chairman, Joseph E. Davies, proved so incompetent that he was removed by the other members of the commission in June, 1916. Link, The Progressive Era, p. 74.

[8]Kolko, p. 274.

[9]Ibid, pp. 274-275.

[10]H. J. Kenner, The Fight for Truth in Advertising, (New York: Round Table Press, Inc. 1936), p. 65

[11]"Developments -- Deceptive Advertising," Harvard Law Review 80 (1960): 1005, 1016-1017.

[12]Printers' Ink, Nov. 23, 1911, p. 68. c.f. Kenner, pp. 26-29.

[13]Otis Pease, Responsibilities of American Advertising: Private Controls and Public Influence, 1920-1940, (New Haven: Yale University Press, 1958), p. 84.

[14]Ira M. Millstein, "The Federal Trade Commission and False Advertising," Columbia Law Review 64 (1964); 439, 451. The Complaints were: Circle Cilk Co., 1 F.T.C. 13 (1916); A. Theo Abbot & Co., 1 F.T.C. 16 (1916); Goldin Bros., 1 F.T.C. 538 (1916).

[15]Nelson B. Gaskill, The Regulation of Competition: A Study of Futility as Exemplified by the Federal Trade Commission and National Recovery Acts with Proposals for Its Remedy. (New York: Harper & Bros., 1936), p. 4. He adds that most of the war work was done by the Economic Division while the rest of the Commission was "rendered practically inoperative" by an internal feud among the commissioners.

[16]"Scope of the Jurisdiction of the Federal Trade Commission Over False and Misleading Advertising," Yale Law Review 40 (1931): 617, fn. 4

[17]258 Fed. 307 (7th Cir., 1919).

[18]Ibid., p. 311.

[19]258 U.S. 483 (1922).

[20]Ibid., p. 493.

[21]Ibid.

[22]Pease, p. 90.

[23]Printers' Ink 123: May 7, 1923, 42.

[24]Printers' Ink 125: Nov. 8, 1923, 78+.

[25]Gerard C. Henderson, The Federal Trade Commission: A Study in Administrative Law and Procedure (New Haven: Yale University Press, third printing, 1927), p. 207.

[26]Ibid., p. 210-211.

[27]Pease, p. 90. For an example of such reassurances, see the remarks by Commissioner W.E. Humphrey in Printers' Ink 143 (June 3, 1926), p. 133.

[28]Printers' Ink 143: June 7, 1928, p. 10.

[29]Ibid., p. 12.

[30] Printers' Ink 143: 14 June 1923, pp. 25-28; 21 June 1923, pp. 41-53; 21 June 1923, pp. 42-48.

[31] U. S., Federal Trade Commission, Federal Trade Commission Annual Report for the Year Ended June 30, 1929 (Washington, D.C.: Government Printing Office, 1929), p. 48.

[32] Ibid., p. 10.

[33] Ibid., p. 55.

[34] Federal Trade Commission Annual Report for the Year Ended June 30, 1932 (Washington, D.C.: Government Printing Office, 1932), p. 47.

[35] Printers' Ink 148: (June 27, 1929, p. 168.

[36] Ibid.

[37] Pease, p. 98.

[38] Ibid., pp. 99-100.

[39] Ralph M. Hower, The History of an Advertising Agency: N.W. Ayer & Sons at Work, 1869-1939 (Cambridge: Harvard University Press, 1939), p. 185.

[40] Pease, p. 150.

[41] Ibid., pp. 158, 160.

[42] 283 U.S. 643 (1931).

[43] Ibid., pp. 646-647.

[44] Ibid., p. 649.

[45] 291 U.S. 304 (1934).

[46] Ibid., p. 313.

[47] Testimony of Ewin L. Davis, F.T.C., before the Senate Committee on Interstate Commerce, Feb. 17, 1976; U.S. Senate Hearings, Committee on Interstate Commerce, 74th Congress, Second Session, S. 3744 (Feb. 17 - March 10, 1936), p. 11.

[48] Ibid.

[49] Printers' Ink 159: May 5m 1932, p. 5.

[50] Ibid.

[51] Pease, pp. 11-117.

[52]Ibid., pp. 117-119.

[53]52 Stat. L. 114 (1938), 15 U.S.C. sec. 45, et. seq. (1970)

[54]Pease, pp. 127-128.

[55]542 F.2d. 611 (1976), cert. denied 430 U.S. 983 (1977).

[56]Ibid., pp. 618-619.

[57]U. S. Congress, Senate Committee on Commerce, Science, and Transportation Report on S. 1991, The Federal Trade Commission Act of 1979, 96th Congress, First Session; CCH Trade Regulation Reports, No. 417, Dec. 26, 1979, Part II, p. 17.

[58]Robert B. Reich, "Consumer Protection and the First Amendment: A Dilemma for the F.T.C.?" Minnesota Law Review 61 (1977): 705, 706.